

CHAPTER 873

S.B. No. 1365

AN ACT

relating to prepaid legal services contracts.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 5.13–1, Insurance Code, is amended by amending Subsections (a), (b), and (f) and by adding Subsection (g) to read as follows:

(a) Every insurer governed by Subchapter B of Chapter 5 of the Insurance Code, as amended, and every life, health, and accident insurer governed by Chapter 3 of the Insurance Code, as amended, is authorized to issue prepaid legal services contracts. Every such insurer or rating organization authorized under Article 5.16 of the Insurance Code shall file with the State Board of Insurance all rules and forms applicable to prepaid legal service contracts in a manner to be established by the State Board of Insurance. ~~[All rates, rating plans, and charges shall be established in accordance with actuarial principles for various categories of insureds. Rates, rating plans, and charges shall not be excessive, inadequate, unfairly discriminatory, and the benefits shall be reasonable with respect to the rates charged.]~~ Certification, by a qualified actuary, to the appropriateness of the charges, rates, or rating plans, based upon reasonable assumptions, shall accompany the filing along with adequate supporting information.

(b) The State Board of Insurance shall, within a reasonable period, approve any form if the requirements of this section are met. It shall be unlawful to issue such forms until approved or to use such schedules of charges, rates, or rating plans until filed ~~[and approved]~~. If the State Board of Insurance has good cause to believe such rates and rating plans do not comply with the standards of this article, it shall give notice in writing to every insurer or rating organization which filed such rates or rating plans, stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than 30 days thereafter, in which such noncompliance may be corrected. If the board has not acted on any form, rate, rating plan, or charges within 30 days after the filing of same, they shall be deemed approved. The board may require the submission of whatever relevant information is deemed necessary in determining whether to approve or disapprove a filing made pursuant to this section.

~~(f) All legal services contracts and related promotional material issued pursuant to Chapter 23 and the issuance of legal services contracts pursuant to Article 5.13–1 shall be truthful and accurate and shall properly describe the coverage offered. Such description should include, but not be limited to, a description of coverage offered as either an indemnity coverage or a contract that provides only consultation and advice on simple legal matters, either alone or in combination with a referral service, and that provides fee discounts for other matters. To provide for the actuarial soundness of a prepaid legal services contract issued under this article, the State Board of Insurance may require that prepaid legal services contracts have rates that are adequate to reasonably provide the benefits under the prepaid legal services contracts. This subsection does not apply to a prepaid legal services contract that provides only consultation and advice on simple legal matters, either alone or in combination with a referral service, and that provides fee discounts for other matters.~~

~~(g) The State Board of Insurance may not determine, fix, prescribe, set, or promulgate maximum rates or maximum amounts of premium to be charged for a prepaid legal services contract issued under this chapter. Nothing in this Act shall be construed as compelling the State Board of Insurance to establish standard or absolute rates and the board is specifically authorized, in its discretion, to approve different rates for different insurers for the same risk or risks on the types of insurance covered by this article. The board shall;~~ ~~nor shall this article be construed as to require the State Board of Insurance to establish a single or uniform rate for each risk or risks or to compel all insurers to adhere to such rates previously filed by other insurers; and the board is empowered to approve such different rates for different insurers, and is required to] approve such rates as filed by any insurer unless it finds that such filing does not meet the requirements of this article.~~

SECTION 2. Subsection (a), Section 23.01, Insurance Code, is amended to read as follows:

(a) *On application of any* ~~[Any]~~ seven or more persons ~~[on application]~~ to the secretary of state for a corporate charter under the Texas Non-Profit Corporation Act ~~a~~ ~~[as a nonmembership]~~ corporation may be incorporated for the sole purpose of establishing, maintaining, and operating non-profit legal service plans, whereby legal services may be provided by such corporation through contracting attorneys as is hereinafter provided.

SECTION 3. Articles 23.10, 23.14, and 23.15, Insurance Code, are amended to read as follows:

Art. 23.10. CORPORATIONS NON-PROFIT; FUNDS; INVESTMENTS. The corporations complying with the requirements of this chapter shall be governed and conducted as non-profit ~~[nonmembership]~~ organizations for the purpose of contracting for and obtaining legal services for their participants through contracting attorneys, in consideration of the payment by the participants of a definite sum to fund the payment of attorneys fees for the legal services to be furnished by the contracting attorneys. Provided further, that each such corporation shall have two funds, namely: the claim fund and the expense fund. The claim fund shall be composed of at least 70 ~~[80]~~ percent of the regular payments by participants, and the application fees. The percentage amounts above stated may be modified by the State Board of Insurance upon showing that such is in the best interest of the then existing persons receiving legal services under contract or that such is necessary for the development of the corporation during its first year of existence. The application fees shall be paid by applicants prior to issuance of a benefit certificate, and shall not apply as a part of the cost of receiving benefits under the benefit certificate issued. Claim fund investments may include, besides lawful money and demand deposits, only certificates of deposits, share accounts, and time deposits in public banks and savings and loan institutions whose deposits are insured by a federal governmental agency, and obligations of a state or the federal government; and the expense fund investments may include only such as are legal investments for the capital, surplus, and contingency funds of capital stock life insurance companies. The net income from the investments shall accrue to the funds, respectively, from which the investments were made. The claim fund shall be disbursed only for the payment of valid claims, taxes on income of such fund, security transfer costs, ~~[and]~~ refunds of fees paid into such fund, ~~[and to the extent approved by the State Board of Insurance,]~~ cost of settling contested claims, expenses directly incurred on or for preservation of investments of the claim fund, and contracts authorized under Article 23.19 of this code.

Art. 23.14. SUPERVISION. (a) Every corporation complying with the requirements of this chapter shall, before accepting applications for participation in said non-profit legal service plan, have sufficient money in its expense fund to cover initial operations and shall submit to the State Board of Insurance a plan of operation together with a rate schedule of its charges to participants and a schedule and projections of costs of legal services to be contracted for on behalf of the participants; which plan ~~[rate schedule]~~ and the sufficiency of expense fund shall first be approved by the State Board of Insurance as adequate, fair, and reasonable ~~[and not excessive]~~ before such corporation shall engage in business. The State Board of Insurance shall have continuing control over the plan of operation of such corporation ~~[and its rate schedule of charges to participants]~~. No change in such plan ~~[or rate schedule]~~ shall be effectuated without its first being filed and approved by the State Board of Insurance.

(b) *The State Board of Insurance may not determine, fix, prescribe, set, or promulgate maximum rates or maximum amounts of premium to be charged for a non-profit legal services plan under this chapter.*

Art. 23.15. DUTIES OF CONTRACTING ATTORNEYS; ADEQUATE FINANCIAL STANDING ~~[APPROVAL OF RATES]~~. ~~[The State Board of Insurance shall likewise approve the ratio of benefits to be paid to anticipated revenues from the rate schedule proposed to be used if such be found to be actuarially sound. No prepaid legal services contract or benefit certificate thereunder shall be issued by corporations complying with this chapter without such finding.]~~ The contracting attorneys shall guarantee to the participants the services stated under the benefit certificates and shall agree to perform such services which they agree to render to the participants under the benefit certificates without there being any liability for the cost thereof to the participants beyond the funds of such corporation held for their benefit in accordance with the plan of operation of the corporation.

Such corporations may issue prepaid legal service contracts without such guarantees and providing for indemnity for costs of attorney services where the attorney is not a contracting attorney under such rules and regulations as may be approved by the State Board of Insurance provided that the State Board of Insurance be satisfied that the plan of operation, financial standing and experience of the corporation (including but not limited to a proper amount of free surplus) is adequate to assure the performance of such contracts.

SECTION 4. This Act takes effect September 1, 1995, and applies only to a prepaid legal services contract or a contract or benefit certificate under a nonprofit legal services plan that is delivered, issued for delivery, or renewed on or after January 1, 1996. A contract or benefit certificate that is delivered, issued for delivery, or renewed before January 1, 1996, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 2, 1995, by a viva-voce vote; the Senate concurred in House amendment on May 24, 1995, by a viva-voce vote; passed the House, with amendment, on May 19, 1995, by a non-record vote.

Approved June 16, 1995.

Effective September 1, 1995.

CHAPTER 874

S.B. No. 1407

AN ACT

relating to contractual arrangements among health maintenance organizations, physicians, and other providers.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2, Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code), is amended by amending Subsections (l), (m), and (n) and by adding Subsection (u) to read as follows:

(l) "Person" means any natural or artificial person, including, but not limited to, individuals, partnerships, associations, organizations, trusts, hospital districts, *limited liability companies, limited liability partnerships, or corporations.*

(m) "Physician" means:

(1) *an individual [anyone] licensed to practice medicine in this state;*

(2) *a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes) or a nonprofit health corporation certified under Section 5.01, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes); or*

(3) *another person wholly owned by physicians [the State of Texas].*

(n) "Provider" means:

(1) *any person [practitioner] other than a physician, including [such as] a licensed doctor of chiropractic, registered nurse, pharmacist, optometrist, pharmacy, hospital, or other institution or organization or person that [furnishes health care services, who] is licensed or otherwise authorized to provide a health care service [practice] in this state;*

(2) *a person who is wholly owned or controlled by a provider or by a group of providers who are licensed to provide the same health care service; or*

(3) *a person who is wholly owned or controlled by one or more hospitals and physicians, including a physician-hospital organization.*